

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EMILIO GUILBERT,

Plaintiff,

v.

**DECISION AND ORDER**  
05-CV-153S

CORRECTIONS OFFICER JAMES SENNET &  
SERGEANT D. BORAWSKI,

Defendants.

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1. Plaintiff commenced this action by filing a Complaint in the United States District Court for the Western District of New York on March 8, 2005. (Pl. Compl., Docket No. 1.) In the Complaint, Plaintiff alleged that Defendants violated his Eighth and Fourteenth Amendment rights. *Id.* On October 25, 2005, Plaintiff's Complaint was dismissed in its entirety. (Docket No. 10.) But after an appeal by Plaintiff, his Eighth Amendment claim was reinstated by the United States Court of Appeals for the Second Circuit. (Docket No. 16.)

2. On January 27, 2009, Defendants filed a Motion for Summary Judgment. (Docket No. 49.) This Court directed Plaintiff to file a response by March 4, 2009. (Docket No. 55.) However, Plaintiff did not file a response by March 4, 2009.

3. On March 30, 2009, this Court denied Plaintiff's fourth Motion to Appoint Counsel. (Docket No. 60.)<sup>1</sup> In the Decision and Order, this Court again directed Plaintiff to file a response to Defendants' Motion for Summary Judgment, and set a deadline of

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<sup>1</sup>All of Plaintiff's Motions to Appoint Counsel have been denied without prejudice. (Docket Nos. 7, 26, 57, & 60.)

April 10, 2009. Id. This Court also warned Plaintiff that the failure to respond to Defendants' motion could result in the motion being granted as unopposed. Id.

4. Despite this Court's Order, Plaintiff did not file a response by April 10, 2009, and to date, Plaintiff has not filed a response.

IT HEREBY IS ORDERED, that Plaintiff shall file a response to Defendants' Motion for Summary Judgment by April 27, 2009.

FURTHER, that Plaintiff is WARNED that failure to respond to Defendants' Motion for Summary Judgment will result in the motion being granted as unopposed. This is Plaintiff's final warning.

SO ORDERED.

Dated: April 13, 2009  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge